Supreme Court, U.S.
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No. 97-1754

In the Supreme Court of the United States

OCTOBER TERM, 1998

IMMIGRATION AND NATURALIZATION SERVICE,
PETITIONER

v.

JUAN ANIBAL AGUIRRE-AGUIRRE, RESPONDENT

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED: APRIL 27, 1998
CERTIORARI GRANTED: OCTOBER 5, 1998

62 pp

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 96-70267

AGUIRRE-AGUIRRE, ET AL

v.

IMMIGRATION AND NATURALIZATION SERVICE

DOCKET ENTRIES

DATE	PROCEEDINGS
1996	
4/10	FILED PETITION FOR REVIEW; DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL; NOTIFIED RESPONDENTS OF FILING. setting schedule as follows: petitioner's opening brief is due 7/8/96; respondent's brief is due 8/7/96; petitioner's optional reply brief is due 8/21/96. (PRO SE) [96-70267] (terr)
5/28	FILED CERTIFIED TRANS OF ADMINISTRATIVE RECORD ON APPEAL IN ONE VOLUME OF PLDGS, 4 CERT COPIES. [96-70267] [96-70267] (ogm)

DATE	PROCEEDINGS
1997	
5/7	ARGUED AND SUBMITTED TO Harry PREGERSON, John T. NOONAN, Andrew J. KLEINFELD [96-70267] (mlm)
8/8	FILED OPINION: PETITION GRANTED AND REMANDED (Terminated on the Merits after Oral Hearing; Remanded; Written, Signed, Published. Harry PREGERSON; John T. NOONAN, author; Andrew J. KLEINFELD, dissenting.) FILED AND ENTERED JUDGMENT. [96-70267] 9/29/97 (dl)
9/22	[3308166] Filed original and 40 copies Respondent INS petition for rehearing with suggestion for rehearing en banc (PANEL AND ALL ACTIVE JUDGES) 14 p.pages, served on 9/19 [96-70267] (ckp)
11/26	Filed order (Harry PREGERSON, John T. NOONAN, Andrew J. KLEINFELD): The petition for rehearing is denied, and the suggestion for rehearing en banc is rejected. [3308166-1] [96-70276] (dl)
2/24	MANDATE ISSUED [96-70267] (ckp)
5/4	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 97-1754 filed on 27 April 1998. [96-70267] (dl)

[58][*]

U.S. Department of Justice
Executive Office for Immigration Review
Office of the Immigration Judge

File A70815341

IN DEPORTATION PROCEEDINGS
Transcript of Hearing

Matter of

Juan Anibal Aguirre Aguirre,
Respondent

Before: JOHN T. ZASTROW, Immigration Judge

Date: September 22, 1994 Place: Phoenix, Arizona

Transcribed by DEPOSITION SERVICES, INC.
at Rockville, Maryland

Official Interpreter: Louise Ballasco

Language: Spanish

Appearances:

For the Immigration and Naturalization Service:	For the Respondent:
John R. Holya, Esquire (Trial Attorney)	Pro se

[*] The bracketed page numbers refer to the pages in the Administrative Record where the relevant transcript portion appears. The Administrative Record was lodged with the Court in conjunction with the filing of the government's reply brief at the petition stage.

[59]

JUDGE FOR THE RECORD

This is Immigration Judge John T. Zastro telephonic proceedings in Phoenix, Arizona, date is September 22, 1994. The matter is Juan Anibal Aguirre Aguirre, A 70 815 341. General attorney is John R. Holya, Esquire and official interpreter is Louise Ballasco (phonetic sp.), both in Phoenix with me.

JUDGE TO MR. AGUIRRE

Q. Sir, are you Juan Aguirre?

A. Yes.

Q. Mr. Aguirre, this is your first time here. Would you like to have a continuance and have some time to try to find an attorney?

A. I got a group here. I've got a lot of group here, can I show you the group?

Q. Well, I can't see it.

MR. HOLYA TO JUDGE

Q. He filed the asylum, he should get an attorney.

A. Okay.

JUDGE TO MR. AGUIRRE

Q. It's my understanding, the Government's attorney is here with me in Phoenix, and I understand, he tells me you filed for asylum, so you probably should look for a lawyer. For instance there is Catholic Social Services up there plus other private attorneys. So, why don't you to take a continuance and get an attorney?

[60]

A. I came here and requested an exemption and I got one for six months.

Q. Well, I want you take some time and get an attorney. I'm going to set this case for 8:30 on November 21st. Look for an attorney. All right, now I've got to read you something. You've been scheduled for deportation hearing November 21 at 8:30 up in Las Vegas. If you don't appear at that time you will be found ineligible for voluntary departure, suspension of deportation,

INTERPRETER TO JUDGE

Q. Pardon?

A. Suspension of deportation.

JUDGE TO MR. ARGUIRRE

Q. Or adjustment of status for a period of five years. Now, there's one more thing I want to verify with you. Do you live at 1400 East Mcdonald Avenue, Apartment B in North Las Vegas?

A. It's apartment 8. What about the six month permit I got?

MR. HOLYA TO JUDGE

Q. I think that's a work permit, Your Honor.

JUDGE TO MR. AGUIRRE

Q. That's a work permit. You have to talk to the people at Immigration to get them to extend it.

A. I got it for—they already gave it to me. I [61] requested it for six months and I got it. I can pick that up on Monday.

Q. Okay, well, then go to work.

A. I am working.

Q. Okay. All right, we'll see you back in November 21st at 8:30. Try to find a lawyer.

A. Okay.

HEARING CONTINUED

[62]

U.S. Department of Justice
Executive Office for Immigration Review
Office of the Immigration Judge

File A70815341

IN DEPORTATION PROCEEDINGS
Transcript of Hearing

Matter of

JUAN ANIBAL AGUIRRE AGUIRRE,
Respondent

Before: JOHN W. RICHARDSON, Immigration Judge

Date: November 21, 1994 Place: Phoenix, Arizona

Transcribed by DEPOSITION SERVICES, INC.
at Rockville, Maryland

Official Interpreter: Sari Torritzki

Language: Spanish

Appearances:

For the Immigration and Naturalization Service:	For the Respondent:
Jack Bartlett, Esquire (Trial Attorney)	Joseph W. Long, Esquire

[63]

JUDGE FOR THE RECORD

This is Immigration Judge John Richardson sitting at a deportation proceeding on the 21st day of November, 1994. I'm at the U.S. Courthouse in Phoenix, Arizona as is Mr. Jack Bartlett, General Attorney with the Immigration Service here in Phoenix.

JUDGE TO MR. LONG

Q. Are you going to need an interpreter, Mr. Long, or does you client speak English?

A. No, he doesn't speak English.

Q. Okay.

JUDGE FOR THE RECORD

Sari Torritzki (phonetic sp.) is present as the court interpreter translating in the Spanish language.

JUDGE TO THE INTERPRETER

Q. Do you swear that you will accurately translate from English to Spanish in the course of these proceedings, so help you God?

A. I do, Your Honor.

Q. Thank you.

JUDGE FOR THE RECORD

Okay, present at the Immigration Building in Las Vegas, Nevada is the respondent Juan Anibal Aguirre Aguirre, A 70 815 341 and his attorney of record is Mr. Long who is an attorney there in Las Vegas.

MR. LONG TO JUDGE

[64]

Q. Your Honor?

A. Yes.

Q. The last name is Aguirre not Aguilar.

A. Oh, okay, Aguirre I just, okay.

Q. Okay.

A. Misread that, you're right. Aguirre Aguirre.

JUDGE FOR THE RECORD

They are present by telephonic speaker phone here in Phoenix.

JUDGE TO MR. LONG

Q. And, do you agree to this telephonic hearing Mr. Long?

A. Yes, Your Honor.

JUDGE TO MR. AGUIRRE

Q. Okay. And, Mr. Aguirre, would you state your full name for the record, please sir.

A. Juan Anibal Aguirre Aguirre.

Q. Okay.

JUDGE TO MR. LONG

Q. Mr. Long, are you prepared at this point to admit service of the Order to Show Cause dated June the 22nd, 1994 and waive reading of the charges and allegations?

A. Yes, Your Honor.

Q. And you have explained to your client, he does understand the nature of these proceedings and all of the rights [65] and matters required for regulation and you waive for the explanation by the Court?

A. Yes, Your Honor.

Q. At this point are you willing to admit the facts, allegations, concede deportability as charged?

A. Yes, Your Honor.

Q. And, are you going to designate a country of deportation?

A. No, Your Honor, we are in that same situation here as we were on the last case.

Q. Okay, so the Court would then designate Guatemala. I assume then that you're asking for asylum?

A. That's correct, Your Honor. Also, this is one that we'd like to renew before the Court, Mr. Aguirre got some help from someone who just did a—well, it's like no application, actually.

Q. Okay, so you're going to file a new application with the Court?

A. Yes.

Q. Can you do that by February the 1st also?

A. Yes.

Q. Okay. February the 1st, 1995, application due or of course you will waive the right to seek asylum. And then we're still setting for the date in April. Would you like Wednesday the 5th at 10:30? The 5th of April?

[66]

A. Yes, I think that would be fine, Your Honor.

Q. Okay, then that would be Wednesday for this case and then case we previously set would be the next day, Thursday.

A. Let me check with my client and make sure that this will be okay.

Q. Okay.

MR. LONG TO MR. AGUIRRE

Q. How is April the 5th. And it starts at 10:30 a.m.

A. Okay.

MR. LONG TO JUDGE

Q. Yes, that's fine, Your Honor.

A. Okay. So April the 5th, 1995, 10:30 in the morning for the asylum hearing. Anything else?

Q. No, Sir.

JUDGE FOR THE RECORD

Okay. Proceeding's are adjourned then.

HEARING CONTINUED

[67]

U.S. Department of Justice
Executive Office for Immigration Review
Office of the Immigration Judge

File A 70815341

IN DEPORTATION PROCEEDINGS
Transcript of Hearing

Matter of

JUAN ANIBAL AGUIRRE AGUIRRE,
Respondent

Before: JOHN W. RICHARDSON, Immigration Judge

Date: April 5, 1995 Place: Las Vegas, Nevada

Transcribed by DEPOSITION SERVICES, INC.
at Rockville, Maryland

Official Interpreter: Aurora Endrate

Language: Spanish

Appearances:

For the Immigration and Naturalization Service:	For the Respondent:
Richard H. Knuck, Esquire (Trial Attorney)	Joseph W. Long Esquire

[68]

JUDGE FOR THE RECORD

This is Immigration Judge John Richardson sitting in a continued deportation proceeding in Las Vegas, Nevada on the 5th day of April, 1995. The respondent is again present, Mr. Juan Anibal Aguirre Aguirre, A 70 815 341. He is accompanied by his attorney of record Mr. Joseph W. Long, an attorney here in Las Vegas. Richard Knuck is present representing the Government, he is a General Attorney with the Immigration Service out of Phoenix Arizona. And the court interpreter present translating in the Spanish language is Aurora Endrate (phonetic sp.).

JUDGE TO MR. LONG

Q. Does your client speak any English?

A. Very limited.

Q. So we will be using the interpreter?

A. Yes.

JUDGE FOR THE RECORD

The Court has received an application for asylum which is at this time marked as Exhibit 2. Let's go off the record a moment.

(OFF THE RECORD)

(ON THE RECORD)

JUDGE FOR THE RECORD

Back on the record. That was a telephone call from another Judge to note concerned with this particular case. And in as I was saying, the application, the accompanying D325 and [68A] all of the documents submitted therewith, Exhibits 2 and 3, country reports etc. is collectively marked as Exhibit 2. Exhibit 3 will be the State Department response, which is essentially a profile of Guatemala with a brief cover letter.

JUDGE TO COUNSEL

Q. Are there other documents to be marked at this time?

A. (Mr. Long) I have no additional documents, Your Honor.

A. (Mr. Knuck) Nothing on behalf of the Service, Your Honor.

JUDGE TO MR. LONG

Q. Would you like your client sworn, Mr. Long?

A. Yes, Your Honor.

JUDGE TO MR. AGUIRRE

Q. Mr. Aguirre would you raise your right hand please. Do you swear the testimony that you give in court will be the whole truth, so help you God?

A. Yes.

Q. Okay, now, you need to —. You can put your hand down. But you need to speak up so you can be heard on the record. Nodding of your head and that type of thing doesn't get recorded. Would you state your full name for the record?

A. Juan Anibal Aguirre Aguirre.

JUDGE TO MR. LONG

[69]

Q. Your witness, Mr. Long.

A. Thank you, Your Honor.

MR. LONG TO MR. AGUIRRE

Q. I want you to listen to my questions carefully. If you don't understand the question, stop me and I want to make sure you do. This is not the Inquisition so relax a little. Can you tell us, Mr. Aguirre, where you were born?

A. Palandeia Avoblanca Jutiapa, Guatemala (phonetic sp.).

Q. And when were you born?

A. Um, the 20th of October of 1969.

Q. And, where did you live in Guatemala?

A. In the same address.

Q. And how long did you live there?

A. For eighteen years.

Q. Is that your entire life?

A. Yes.

Q. Did you attend school in Guatemala?

A. Yes.

Q. The University?

A. One year.

Q. And, any other institutes?

A. I went to six years in primary school, three years to the Institute of nationale (indiscernible), and basic education and ah, three years at the Institute of College, [70] Private College of National private college institution.

Q. And what did you study at the National?

A. Accounting.

Q. And did you graduate from there?

A. Yes.

Q. With a degree in Accounting?

A. Yes.

Q. Did you work in that field?

A. One month.

Q. While in school were you active in the student union?

A. Yes.

Q. Is that also known, as the Estudeante Syndicado (phonetic sp.)?

A. Yes.

A. Yes.

Q. How long were you a member of that organization?

A. From '89 to '92.

Q. Did you have a leadership position in that organization?

A. Yes.

Q. Can you describe that?

A. It was called a directive of the college.

Q. And that is, that is his position with the student body representatives?

A. Yes there was a special board of directors.

[71]

Q. Okay. I'm talking now about the Estudeante Syndicado.

A. Yes.

Q. Were you a member of that organization?

A. Yes.

Q. Is that different from a student directive?

A. Yes.

Q. What was your position in the Syndicado?

A. I was in charge of operating everything that rest of the students to know about activities.

Q. And what kinds of activities were you involved in?

A. In everything we want to do the study of the students.

Q. In the Syndicado position what activities was he involved in? With the Syndicado?

A. Uh, what I was doing within the syndicate of the students was to promote all the strikes of the students.

Q. Can you describe that organization at Jutiapa?

A. Yes.

Q. Please do.

A. We were 22 associations, and in the total we were about a 1000 participants.

Q. And what were the activities that this group involved themselves in?

A. Whenever there was a body of someone killed, a [72] student killed, we would go out and then just strike, you know, all by either burning buses, breaking windows or just attacking the police, police cars.

Q. Were any of your activities ever related to government decisions?

A. Yes.

Q. Would you protest their decisions?

A. Yes.

Q. What types of decisions would prompt protests?

A. We would, we would manifest against the high crisis of the fare in the buses for students.

Q. Were you concerned about human rights?

A. Yes.

Q. How would that manifest itself? What types of human rights were you concerned about? And what types —.

MR. LONG TO INTERPRETER

Q. Well, let's ask that question first.

MR. AGUIRRE TO MR. LONG

Q. Uh, during this, at this time, we were concerned because of the human rights that you were concerned about. 'Cause whenever there was a person that appeared or just was found dead, uh, whether it was a student or another person, uh, they were never investigating. They were always overlooked whatever had happened. And they never investigated the culprit in that.

[73]

A. Was the government aware of the existence of this organization?

Q. Yes.

A. How do you know that?

Q. Whenever I watched TV there was always this news about asking the, uh, group of student to calm the situation, to, uh, resist from, from doing this.

A. Did the government know that you were a member of this group?

Q. I don't know if the government knew about my participation or my being a member of this organization. But, I do know that they have a list of all the students and they also have the names or the list of those who are outstanding in their activities.

A. Do you know if you were on any of those lists?

Q. Yes.

A. How do you know that?

Q. Because the director of the uh, um, uh, college takes care of sending the list of all the students.

A. Did the government ever threaten you?

Q. I don't know if it was the government or what, because there were three groups, but I am assuming that there were anonymously representing the government of those who threatened me.

A. So there were anonymous threats?

[74]

Q. Yes.

A. What did they say?

Q. The notes would say to stop doing what we were doing and to be more peaceful. Otherwise we would have to attain ourselves to whatever the consequences would bring.

A. What did he thought that that meant?

Q. We understood this as being that those who were outstanding in this list were the ones who were the leaders of these, uh, demonstrations and of these acts, so they were addressing us to stop that and it was directed to us.

A. More than one threat received?

Q. Yes.

A. What did the additional threats say?

Q. They almost say the same thing.

A. Did any of the threats ever state that the leadership of the group would disappear?

Q. Yes.

A. Why did he think that they were from the government?

Q. Uh, in the last two that we received, on the paper it said official from the government.

A. So it was on government letterhead?

Q. Yes.

A. So, really it was not completely anonymous.

Q. It was only the stationary paper, but it was not [75] signed by anyone.

A. Were you also involved in the student body?

Q. Yes.

A. What position did you hold in the student body?

Q. I was Vice President of it.

A. How long were you in that position?

Q. For six years.

A. What were your duties in that position?

Q. My position there and my responsibilities dealt with being on guard always to watch out for how well or how, um, the demonstrations were being carried out and to do the utmost of it, so that everyone, all the members would be notified of it. I was in charge of that.

A. Did the student body also work with the faculty of the college?

Q. Yes.

A. What would that activity involve?

Q. First we was in charge of receiving all the information and then we would pass around to all the rest of them.

MR. LONG TO JUDGE

Q. If I might, Your Honor, I want to just talk to Juan just a second. He had two positions and I think because he's nervous he's getting the two confused.

A. Okay one was the—.

[76]

Q. The Estudeante's—.

A. The Aquablanca? Is that the one? Is that the student—?

Q. It's called—the name of the organization is the Estudeante Syndicado.

A. Okay, that's the student body then, the Syndicado?

Q. Actually it isn't, it was a group, a subversive group that he had a leadership position in it.

A. Well, it looks, I'm looking at his application, it says he was a leader in the Aquablanca and then apparently the Syndicado was some type of an umbrella group, I guess and then of course there was the student body. So it looks like they're probably three different.

Q. Actually we'll try to clarify that in our questioning, but there really are only two. Aquablanca and in that application where it says he was the leader of the Aquablanca group in Jutiapa. Jutiapa is a—.

A. A sail?

Q. —state.

A. Oh.

Q. Aquablanca is the city and he was a leader in the Aquablanca cell in Jutiapa.

A. But was that part of Syndicado?

Q. Syndicado Estudente.

A. Okay.

[77]

Q. He also was the vice president of the student body.

A. Okay.

Q. And I don't know if it's —

A. It's— it's—

Q. Okay, maybe this is what we need. He refers to it in Spanish as the Directiva. And maybe my use of the words is causing him confusion here, because he—

A. Well, it's also possible that his activities overlapped, too. Well, you, go ahead and you can try to clarify that.

Q. Okay. Thank you.

MR. LONG TO MR. AGUIRRE

Q. Well, I'm asking you now about the Directiva (phonetic sp.).

JUDGE TO MR. LONG

Q. And that refers, Mr. Long, to the student body?

A. Vice president student, yes, that's an official capacity rather than one that's—

Q. Okay.

MR. LONG TO MR. AGUIRRE

Q. Do you understand?

A. (In English) Yeah.

Q. Okay. In the Directiva you were vice president?

A. Yes.

[78]

Q. Your duties were more official than in—?

A. Yes.

Q. Than in the student syndicate?

A. Yes.

Q. And what were your duties as the vice president of the Directiva?

A. My obligations or responsibilities was to have everything in order to maintain everything in order at the, uh, college.

Q. What did that involve?

A. We were like in charge of everything there was to be done. If there was to be a strike then we were the ones to notify all of them, all of the members.

Q. Did the Directiva also represent the students with the faculty if they had grievances?

A. Yes.

Q. Were there formal procedures for handling those types of problems.

A. Yes.

Q. And were you involved in that process also?

A. Yes.

Q. Is that a position that is a high profile position in the sense that most students and faculty or people in the University knew that you were in that position?

A. Yes.

[79]

Q. Would they also know that you were involved in organizing strikes officially through the Directiva?

A. No, the Directiva or this, uh, group was only in charge of the students and of the notifications of it.

Q. Notifications in what fashion?

A. They would notify them as to what day they would take place a strike or a manifestation where we would go out and burn buses and break things.

Q. What's the difference between the Directiva and the Estudeante Syndicado?

A. The Directiva is only in charge of whatever concerns the college, while the syndicate is something of a national group.

Q. So, his membership in both groups, he was involved in a lot of the same activities?

A. Uh, within the Directiva we would just, um, plan, or get together and plan that if we did not like a particular professor or his ways we would then make a purpose of, displacing him, by taking him out of the faculty.

Q. As well as organizing strikes?

A. (In English) Yes.

Q. Did most of the students and the faculty at the school know you were in the Directiva?

A. (No audible response.)

Q. No, no, I mean the organization you were the vice [80] president of.

A. At the college?

Q. Yes.

A. Please repeat the question.

Q. Did most of the students and faculty at the college know he was a vice president in the Directiva?

A. Yes, because they were the ones who were electing us.

Q. Okay. Did most students and faculty know that the Directiva was also involved in a lot of the activities that the members of the Estudeante Syndicado were involved in?

A. Yes.

Q. Were any of the Estudeante Syndicado members ever harmed? Let me, let me—.

A. I am confused between the faculty of the—.

Q. Let me, let me rephrase the question. I'm using the term incorrectly. The organization is the Syndicado Estudeante, were any members of that organization ever harmed?

A. Yes.

Q. What happened to them?

A. Five persons that were members of the student syndicate, they were found dead in different areas, in different parts of a area?

Q. Does he know when that occurred?

A. It happened through a period of in six months. It [81] happened quite often.

Q. What year?

A. It was between '89 and '92.

Q. Does he know how they were killed?

A. I read in the newspaper that five of them had been killed, one had been kidnapped and then five days later he appeared, but he was dead. He was found dead.

Q. Does he know who killed the others?

A. Uh, they appeared to be like unknown persons, but in one of them it turned out to be that it was the guerrillas. And, in another group of students we thought it was the government who was doing this, because, uh, they never investigated who it was, and there was a closed case.

Q. So, he suspected the government, because they would not investigate these cases?

A. Yes.

Q. Were the guerrillas aware of your activities?

A. They will know all about our activities, because they have people who infiltrate the groups.

Q. Did you ever have any encounters with them?

A. Yes.

Q. When?

A. There were three men, this happened in the football field, uh, three men completely armed and in uniforms came to tell us if we didn't cease doing these things, we better [82] stop doing this activities, because then we will have to face the consequences of this acts. And that a friend of mine, Carlos Gonzales, uh, also was there and we were told that if we did not stop, the consequences could be very bad. They asked us to join them, because they did not want to have any competition from any other group.

Q. So, when a guerrilla tells you, face the consequences, what does that mean to you?

A. That we will be then, uh, killed.

Q. Do you think the guerrillas could kill you?

A. Of course.

Q. Do you think they would?

A. Yes.

Q. They asked for the support of the Syndicado Estudeante?

A. Yes.

Q. And you refused to support them?

A. Yes.

Q. You stated they were in uniforms, can you describe the uniforms?

A. Uh, the difference between, uh, the government and the guerrillas are that they have the same color of uniforms, that olive green color, uh, but they do not wear a hat, they wear them down on their heads.

Q. And that's what these men were wearing?

[83]

A. Yes.

Q. What was the date of this ruffling?

A. I don't remember the day, exactly, but it was around June or September.

Q. What year?

A. Of '92.

Q. Do you know if the guerrillas ever harmed any members of the Syndicado Estudeante?

A. Yes, this is the time when they took one of them, uh, the members and later he appeared dead.

Q. Where did that occur?

A. - In the capital?

Q. Guatemala City?

A. (In English) Yes.

JUDGE TO MR. LONG

Q. Before I get totally confused, I thought you had asked him about the Syndicado when he was talking about the five members dead?

A. Yes. I was.

Q. Okay, so we're back—. Okay.

MR. LONG TO JUDGE

Q. This is on the record let me just try to clarify it.

A. Well he talked about the kidnapping in connection with the five, so—.

[84]

Q. Correct.

A. The way you asked that I thought maybe you were asking about the Direct—?

Q. The Directiva. No.

(OFF THE RECORD)
(ON THE RECORD)

JUDGE FOR THE RECORD

Tape two, April the 5th, 1995 in Las Vegas. The A Number is 70 815 341.

JUDGE TO MR. LONG

Q. You may continue, Mr. Long.

MR. LONG TO MR. AGUIRRE

Q. Have any of your relatives ever been harmed by the guerrillas?

A. Yes, an uncle of mine.

Q. What happened to him?

A. An uncle of mine, when he returned from the United States, and he went to pick up his card at the border of Mexico, of Guatemala, he was kidnapped and he was carrying an ID, a military ID and he was then later, he was kidnapped and was later found dead.

Q. Do you know why they murdered him?

A. Because he was carrying a military card.

Q. Were the guerrillas aware that he was your uncle?

A. No.

[85]

Q. Were you in the military?

A. (In English) Yes.

Q. Describe your military service, please?

A. I served in the military in Guatemala for three times a week, 12 times a month and for three months, when it was at the end of the year of the school year.

Q. And how long were you on active duty?

A. For one year.

Q. Did you ever have any difficulty as a result of that military service?

A. Uh, not while I was there, but if the guerrillas ever find me or the military ID then they will kill me.

Q. Were you active in any political parties in Guatemala?

A. Yes.

Q. Which one?

A. UCN.

Q. What does that stand for?

A. Uh, National Central Union.

Q. Were you active in that party?

A. Yes.

Q. What did you do?

A. I was in charge of the celebrations of the party and also in the protests against the government.

Q. Did you help organize rallies?

[86]

A. Yes.

Q. Did you help recruits, new members of the party?

A. Yes.

Q. As a result of that membership were you ever threatened?

A. Yes.

Q. Who threatened you?

A. A member of the official, uh, government.

Q. Who was that?

A. Uh, what do you mean?

Q. What was his name?

A. The one who threatened me?

Q. Yes.

A. His name was Julio Palmanale (phonetic sp.)

Q. What was his position?

A. He was, uh, a member of the congress.

Q. What did he tell you?

A. He wanted me to stop to, to stop recruiting people to join the, uh, UCN and, uh, to join his party instead.

Q. And what did he threaten you with if you didn't do as he asked?

A. Because, he was the highest authority there, he told me that if I did not do what I was being asked by him that I should then, count on the consequences and would see what would happen to me.

[87]

Q. And what did that mean to him?

A. To me that was a threat.

Q. A threat of what?

A. I don't know. I did not know what to expect from him since he was, uh, a very, uh, high level official and almost everyone fear him.

Q. Did he think he would be harmed?

A. Yes.

Q. Did you quit the party?

A. From the party of where I was, no. Until I came here.

Q. When did this occur?

A. On January 2nd of '93.

Q. What occurred on January 2nd of '93. Yeah, you just gave me a date.

A. That day is the day I left the country to come here to the United States.

Q. Okay. When was he threatened by the government official?

A. It was about five days before, uh, Christmas.

Q. What year?

A. Of '92.

Q. Who was the leader of that party that you were a member of?

A. Horhey Capin DeCourt (phonetic sp.).

[88]

Q. Was he assassinated in 1993?

A. Yes.

Q. Do you know who assassinated him?

A. The newspaper reports that they don't know who did it and up 'til now no one has investigated it.

MR. LONG TO JUDGE

Q. Okay, Your Honor, in the country report, 1993 of Amnesty International the speculation is that he was assassinated by extra-judicial members affiliated with the former president.

MR. LONG TO MR. AGUIRRE

Q. Was any harm done against other party members?

A. Yes, two of his body guards, on the day he was killed, they both resulted wounded. They were wounded.

Q. Were there any other acts of violence against it. Is he aware of any other acts of violence against general party members?

A. When I was there or after I left?

Q. That he's aware of?

A. No.

Q. When did you decide to leave the country?

A. On the the 7th of January of '92.

Q. Why did you decide to leave at that time?

A. I had a friend, uh, in the, uh, congress, whose name was Ferdi Erganza (phonetic sp.) and he told me that the government was planning to kill some of the students and that [89] I might be a member of those who were targeted to be killed.

Q. Who is Ferdi Erganza?

A. He was a representative in the congress of the republic.

Q. How would he know that information?

A. Because he was a big politician and he knew everything there.

Q. Why would he tell you?

A. Because, uh, I was a member of a football team of which he was the owner and he was very fond of me.

Q. So you were friends?

A. Yes.

Q. And he was worried about you?

A. Yes.

Q. Do you know if there were actually any executions following Ferdi's warning?

A. I couldn't tell you because I left and then came here to the United States.

Q. Have you been contacted by anyone in Guatemala since leaving Guatemala?

A. With my family.

Q. Have you heard from your former school director?

A. Yes.

Q. How did he contact you?

A. He found, he asked my family for my address and he [90] wrote me a letter.

Q. What did the letter say?

A. He told me to prolong my stance here in the United States, because people that I, or persons not identified were coming there to look for me.

Q. Do you know who they would be?

A. It could be people from the government or could it be, uh, guerrillas.

Q. Why would they be looking for you?

A. Because as member, member of the students and because I was so involved in the politics over there.

Q. Do you have any reason to thinks anyone aside from a government representative or guerrilla would be looking for you?

A. Yes.

Q. Who would be looking for you besides the government or the guerrillas?

A. You mean without being those two parties?

Q. Right.

A. I don't have anyone else.

Q. That really was what the earlier question was, would anyone besides them be looking for?

A. It could be a secret group that the government has.

Q. Here's the question. Does anyone have—. Does [91] he have any reason to think that anyone would be at the school looking for him who was not involved in those two groups?

A. No.

Q. Do you owe anybody any money or anything of that nature?

A. No.

Q. Do you have any family in Guatemala?

A. Yes.

Q. How many members of your family are there?

A. There are my parents, two brothers and two sisters.

Q. Where do they live?

A. In Aquablanca.

Q. Do you fear returning to Guatemala?

A. Yes.

Q. Why?

A. Because, right now the guerrillas are really out in a crazy way looking for people who were members of the military just so they can kill them.

Q. And are you worried about the government as well?

A. Yes, I do fear that the government also, uh, will look for me, because since they knew that I was an

important member or at least, uh, a person that was outstanding and a notoriety in the group of the students there, that they would be looking for me.

[92]

Q. Are you willing to return to Guatemala?

A. No.

Q. Do you think the government would be able to control those who are threatening you?

A. If the government that is there now?

Q. Yes.

A. I will not be able to tell you now, because I an not well informed as to how the government is doing there now.

Q. You would not be willing to go?

A. No.

MR. LONG TO JUDGE

Q. I have no further questions.

JUDGE TO MR. KNUCK

Q. Mr. Knuck?

A. Thank you, Your Honor.

MR. KNUCK TO MR. AGUIRRE

Q. Mr. Aguirre, you say that you personally burned some buses and broke some windows and things in some of these organized uprising in that you were involved?

A. Yes.

Q. On how many occasions did you burn a bus?

A. Uh, during the time of '89 and '92, all those years, we burned buses.

Q. Okay. And, how many buses do you think you burned during those three years?

[93]

A. Myself or all the association?

Q. Yourself.

A. In our group, about 10, at the time.

Q. And, how would you burn them? Would you splash gasoline on them? Or exactly how?

A. Yes. We was, uh, just, uh, uh, splashing with gasoline and then burned them and then burn the tires and all.

Q. And, were there any people on board these buses when you did this?

A. No, because we would stop the bus, help all the people, uh, get out of the bus, and then because there were so many, we would just stone them and make them get away and then burn the bus.

Q. To your knowledge, was anyone hurt during any of these bus burnings or stonings?

A. Of the students or the other people?

Q. The other people?

A. No, we just hit them if they did not want to get off the bus.

Q. How did you hit them? Did you strike them with a club? Or, how?

A. We would have sticks, you know, to hit them with or we would just tie them with ropes. But, if they be, I mean if they hit our, uh, bus then we get off the bus.

Q. And, these people who were on the bus were just [94] ordinary citizens of Guatemala?

A. Yes.

Q. And, you say one of the reasons you burned buses was to protest the high prices of the bus fares?

A. Yes.

Q. When you were burning these buses and throwing rocks and things at people did you cover your face

with a bandanna or in some other way hide your identity?

A. Yes, we would cover our faces.

Q. And, during the times that you burned the buses, you say you also broke windows and other things?

A. Yeah, we would break the windows of the stores and we would just take, I mean, um, uh, raid the stores. Taking everything they have.

Q. So, you were, in other words, looting the stores?

A. No, we did not steal from the stores, we simply took the people out of the stores that were there. And we would throw everything on the floor.

Q. But you never stole anything?

A. No.

Q. The people who were in the stores, did you treat them in a similar fashion that you treated the people on the bus, that is throw rocks at them and hit them with sticks and tie them with ropes in order to get them to go?

A. If they did not try to do anything to us, we would [95] not do anything to them. Because, we would always explain to the people who were there in the buses, for instance, why we were doing this and why we were protesting and doing these things, because of the

high, um, fares that the buses had. Some of them would even, uh, support us.

Q. I assume that burning the buses and breaking the windows and such things is a crime in Guatemala?

A. Uh, it doesn't seem to be a crime, but if we are caught, we would have to be jailed then.

Q. So, I would further assume that if the government did know your identity as one of these people in the groups that were burning the buses, that they would come and arrest you and put you in jail?

A. Only if they catch us, because usually whenever the police come, we always fight the police. And so if when they, uh, catch one of us.

Q. Are you saying that if the police knew of your identity as one of the people who had, let's say, burned a bus two months ago, they wouldn't come and arrest you?

A. Yes, but, uh, they could not identify us because we were always well covered, well, ah, protected.

Q. I guess that's my point, sir, that you were never arrested and jailed, the government didn't know that you were doing these activities? Is that correct?

A. They have a list of all the students that are in [96] the ministry of education because they get a list of all those who are students and they know who is doing what. But, within this, uh, long list and large group of students, the police never really knows who is the

leader and who is the one who is actively participating in this.

Q. Now, Mr. Aguirre, you mentioned that some people that you identified as guerrillas came to you and asked you to stop your activities. And I assume that those activities were burning buses and breaking windows?

A. What they did not want is another group to make competition for them and have other groups do the things to the government.

Q. So, you were burning the buses that they wanted to burn? Is that right?

A. Yes.

MR. KNUCK TO JUDGE

Q. I have nothing further, Your Honor.

JUDGE TO MR. LONG

Q. Re-direct, Mr. Long?

A. Yes, Your Honor, just a few questions.

Q. Before you do that, let me ask him just one thing, if I might?

A. Sure.

Q. Okay.

JUDGE TO MR. AGUIRRE

[97]

Q. Mr. Aguirre, on your application, you indicate that, and I'm talking about the member of congress who told you about student leaders being targeted. In your application, you indicate after you came to the United States, or after you left Guatemala,—

INTERPRETER TO JUDGE

Q. What did you say, Sir?

A. I understood —.

JUDGE TO MR. AGUIRRE

Q. In your application, you indicate that after leaving Guatemala you became aware of what happened regarding your information that student leaders were going to be killed. Do you understand what I'm talking about?

A. I didn't have a better explanation (indiscernible.)

Q. Okay. You said that around January of 1993, a friend of your in congress told you the government was planning to kill some student leaders and that you might be on the list and you indicated that is why you left Guatemala January the 7th, because you yourself thought you might be on the list.

A. Yes.

Q. After leaving Guatemala did you learn if any student leaders were harmed or killed?

A. Uh, yes, I learned in California through the news, in the newspaper that I read, that one of our members of the, uh, [98] syndicate, uh, the student syndicate had been killed, but other members, about four other members, came this way too. They left Guatemala and came this way.

Q. So, was this a student leader from your department?

A. Not of our department. He was not of our department, but he was from the same area in the um, uh, from the East or West, of different state.

Q. How many student leaders departed in January of 1993?

A. Four of us came?

Q. Including yourself?

A.– Yes.

Q. Okay.

JUDGE TO MR. LONG

Q. You have it, Mr. Long. I'm sorry, you may continue.

A. Thank you, Your Honor. With regard to your questioning, I've prepared this document and it states

that one of the leaders, the leader executed was in his department. That is an error that I need to take blame for, I think, it's difficult sometimes to communicate with Mr. Aguirre and I think that I may have misunderstood him and so I apologize for that.

MR. LONG TO MR. AGUIRRE

Q. With regard to the police in Guatemala—? I [99] don't want to make this question too long. Mr. Knuck asked if the police would come after you if they knew that you broke windows.

A. If they knew it was me, yes.

Q. Does he know how the police operate?

A. Yes.

Q. Did they investigate murders in Guatemala?

A. When it is a particular, I mean a private citizen, they very seldom investigate.

Q. Why would they be after people who break windows if they're not after murderers?

A. They base themselves on what they see at the time and those where they captured and take them. And this is much easier for them.

Q. You mean they wouldn't come after you if they found about you later?

A. Uh, if it is the first time, uh, they will not, but if they find out that continually I am the person involved then they will get a judicial order and come and get me.

MR. LONG TO JUDGE

Q. I have no further questions.

A. Any further evidence, Mr. Long?

Q. No, Your Honor.

JUDGE TO MR. KNUCK

Q. Any evidence from the Government?

[100]

A. No, Your Honor.

JUDGE TO MR. LONG

Q. Summation, Mr. Long.

A. Yes, Your Honor. I'd like to say that Mr. Aguirre is a you man from Guatemala and that in itself is probably a class that has one of the highest mortality rates in the world. As a student in Guatemala he was involved in a number of organizations that had presented high profiles to the government and to the guerrillas. He was involved in the student's Directiva or the student body of directors. He was also involved in the UCN political party and he was involved in the Syndicado Estudeantel involved in a lot of politically oriented activities. As a student leader he was involved

in a nationwide group that was involved in a protest against the government. He also was a, as I said, involved in the political party whose leader was assassinated and was targeted by extra-judicial groups for violence. And as a member of the military reserve he was also at risk. He was persecuted, I would submit, in that threats have been made against his life by what he believed to be government agents and by guerrillas.

And in Guatemala, more than any other place in Central America, a threat is as good as a death warrant and they certainly carry them out with alarming regularity. Because he has been a leader in these groups and he has been active in a lot of political activities, I would submit that the activities that [101] he's been involved are political activities that protest against the government and if they do take the form of violent protest, then, be that as it may, those are protests and he's stating his political opinion and have taken a position and he has been threatened for that. I think that his fear, based on the environment in Guatemala, that is worsening even now, meets the standard of a subjective and objective fear of persecution. And that in as stated in the—I can't read my writing—Aguilare Acota (phonetic sp.) in the 9th Circuit. Considered within the entire community of events, considering the country that he's from, considering the activities that he's been involved in and the threats that he has received, that he has proved to the Court that he has a reasonable fear of persecution. That his fear of returning to Guatemala is valid and that a reasonable person in similar circumstances would be correct in fearing persecution. He doesn't have to show that he would definitely be persecuted if he returned. He doesn't necessarily have to show that he has been

persecuted, but that he has a reasonable fear. And in *Cardoza*, one of the examples cited by the Court, offered a chance of ten percent even, as long as his fear is reasonable and, I believe that it is, in this case, we'd like to ask the Court to grant his application for asylum. I believe the agencies that he has encountered down there have proven time and again that they are capable and willing of murdering anyone that they suspect of harboring any type of political opinion that runs counter to [102] them. And he's certainly been involved in enough activities to have attracted enough interest and made enough enemies of people who would certainly kill him. And that's all I have to say.

Q. Mr. Long.

JUDGE TO MR. KNUCK

Q. Mr. Knuck?

A. Thank you, Your Honor. Well, Your Honor, I think that there's a couple of grounds that you could deny the request for asylum on. First of all, I think all of the activities and the quote threats that he's related to the Court today are very conclusory and never really very exact toward him and I think he's awful dog garn lucky that nothing did happen to him considering his activities and by the rightful long arm of the government. Counsel for respondent called the group subversive, I think he's a terrorist, I think you could deny his application on the basis of being a terrorist.

(OFF THE RECORD)

(ON THE RECORD)

JUDGE TO MR. KNUCK

Q. You may continue.

A. Thank you, Your Honor. As the Court well knows, being a terrorist is a bar, an absolute bar to a request for asylum. And he testified that between the years of '89 and '92 he burned 10 buses and hit people with sticks and stoned them and tied them up with ropes, and these are just general population [103] who were riding the bus. I call that terrorism. Breaking, just random violence. Breaking the windows of stores and treating those people in the same fashion, just against high prices of bus fares, that's a—you know, if he were caught by the police there would be very, very severe penalties. If he did it here there would be awfully severe penalties for doing those kind of things.

And it rises, of course, to the level of aggravated felon also. Even though he hasn't been convicted of anything, he's admitted to the essential elements of arson and general mayhem. And, of course, he fought the police too. It's obvious that the police don't know that he's doing this or they'd have him in jail right now. And rightfully so. He may be on some list as being a student at a school, but I don't think he's on any kind of list of the government. The letter, that letter that came, I believe he said that there was a governmental letterhead threat letter to him saying that he better be more peaceful or face the consequences. I think he had a friend in the police department, because that's awfully friendly advice. Essentially they're saying, if you get caught doing this, there's going to be a high price to pay. As it should be. And then he also testified that he's going to have problems with the guerrillas because

he's competing for their limelight of burning buses and things. I don't think that's persecution, Judge, that sounds like war and gamefare to me. I just don't believe that there is [104] any basis to grant his request for asylum and certainly should not grant him voluntary departure based on the grievous crimes that he's committed.

JUDGE TO MR. LONG

Q. Any response to that, Mr. Long?

A. Yes, Your Honor.

Q. Is your client a terrorist?

A. No, I don't think he is, Your Honor. I think he is a college student in a country that has a rich history of brutal murder of anybody that's moving about. As a young man, he did not have many alternatives in Guatemala. And to voice political opinion or try to, I think in Guatemala, to try to effect constructive change through any process other than one that involves aniniminity is to take your life into your own hands. He was involved in student government at the school that he was into. And it's well documented in the information from the State Department and other sources that student leaders had a high mortality rate. Here in the United States, I am sure that we are in a totally different situation, when one talks of burning a bus or breaking windows to try to make a point, that's not necessary here, that's not the way life is in this country and I'm sure we're all grateful for that. I know Mr. Aguirre is here because of the peace and stability and the freedom that is offered. In Guatemala, if you try to use the legitimate avenues of political expression,

unless you are well connected with a [105] powerful armed force to protect you, you are risking death. I don't believe Mr. Aguirre is a terrorist. He has not manifested any type of criminal behavior since he's been in this country. He successfully graduated from an institution of higher learning in that country and could have pursued, if he were able to, a professional career as an accountant. If this application is denied today, I would ask the Court to allow Mr. Aguirre to exercise voluntary departure. He is not a threat to this community or to this country. And I would urge the Court to grant his application for asylum, because there is a very real possibility that he will die if he returns to Guatemala. They don't put them in jail down there, they take them out in the woods and they shoot them.

Q. Very well.

JUDGE RENDERS ORAL DECISION

JUDGE TO MR. KNUCK

Q. Does the government wish to reserve appeal?

A. Yes, Your Honor.

Q. Okay. That appeal if you decide to file it, will be due no later than April the 17th, 1995. Failure to file by that date will constitute a waiver of the right to appeal and my decision will become final.

JUDGE FOR THE RECORD

And these proceedings are concluded.

HEARING CLOSED

[106] CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE JOHN W. RICHARDSON in the matter of:

JUAN ANIBAL AGUIRRE AGUIRRE

A 70 815 341

LAS VEGAS, NEVADA

was held as herein appears, and that this is the original transcript thereof for the file of the Executive Office of Immigration Review.

/s/ LAURA M. DEBOY
LAURA M. DEBOY, Transcriber

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May 10, 1995
(Completion Date)